IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 891 OF 2006.
IN
CRIMINAL APPEAL NO. 521 OF 2006

Ramchandra @ Ravi Tukaram Avghade. ... Applicant.
Versus.
The State of Maharashtra. ... Respondent.

Shri R.V.Gupta for the Applicant.

Shri A.S.Shitole, A.P.P.for the Respondent.

CORAM : ABHAY S.OKA, J.

DATED : 21st September, 2006.

P.C.:

1. Heard the learned Advocates appearing for the parties. The conviction of the Applicant along with the other co-accused is for offence punishable under sections 143, 144, 147, 148, 326, 304(I) read with 149 of the Indian Penal Code. The substantive sentence is of 10 years. The Applicant is the original Accused No.6. The Applicant was on bail through out the trial.

2. The Advocate for the Applicant pointed out the deposition of eye witnesses and stated that none of them have stated that the Applicant was present at the time of the assault. He pointed out that the witnesses have deposed about the presence of the Applicant in the earlier part of the day. He, therefore, submitted that no case was made out by the prosecution as against the Applicant. The learned A.P.P. opposed the bail

application by contending that the substantive sentence is of 10 years. He pointed out the evidence of the material witnesses.

3. I have perused the notes of evidence of P.W.1, P.W.2 and P.W.3 who are the alleged eye witnesses. All of them have deposed that on 13th March 1998 at 10.30 a.m. there was a quarrel going on between the Applicant and Chandrakant Gite and P.W.1 and P.W.2 went there to separate the quarrelling persons. The incident of assault has taken place at 1.30 p.m. or thereafter. Though the witnesses have deposed about the presence of other accused persons and the role played by them, none of them have stated that the present Applicant (Accused No.6) was present at 1.30 p.m. or thereafter. The witnesses have not deposed about the role of the Applicant in actual assault. Considering this and the fact that there is no allegation against the Applicant about the misuse of the bail granted during the course of trial, a case is made out for grant of bail. The submissions which are made by the learned A.P.P. may apply to the other accused persons as their case stands on different footing.

4. Hence the following order is passed:

(i) The Applicant shall be enlarged on the same bail on which he was enlarged on bail during the

pendency of the trial, subject to filing of fresh bail bonds.

(ii) The Bail is granted subject to condition that the Applicant will report to the Antop Hill Police Station, Mumbai on every 1st and 2nd Saturday of every calender month till disposal of the trial.

Judge.